

The rule of law: Approaches of the African Commission on Human and Peoples' Rights and selected African states

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Summary

The African Commission on Human and Peoples' Rights is empowered to promote and protect human rights in Africa. Although the African Charter on Human and Peoples' Rights does not expressly use the phrase 'rule of law', the African Commission has interpreted its mandate under the African Charter as allowing it to promote and protect the rule of law in Africa. The article looks at four mechanisms through which the African Commission has attempted to promote the rule of law – in its resolutions, individual communications, promotional missions and through the periodic reports of state parties to the African Charter. The article shows that the African Commission has given different meanings to the concept of the rule of law. The article shows that, in their periodic reports to the African Commission, different African states have different understandings of the rule of law and have taken different measures to promote the rule of law in their jurisdictions. What is apparent is that the promotion and protection of human rights are crucial elements in rule of law discourse.

1 Introduction

The African Commission on Human and Peoples' Rights (African Commission) was established under article 30 of the African Charter

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on Human and Peoples' Rights (African Charter),¹ with the mandate to 'promote human and peoples' rights and ensure their protection in Africa'. The drafting history of the African Charter has been a subject of numerous academic publications and will not be repeated here.² Article 45 of the African Charter provides for four broad functions of the African Commission:

- 1 to promote human and peoples' rights and, in particular:
 - (a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to governments;
 - (b) to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislations;
 - (c) [to] co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
- 2 [to] ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
- 3 [to] interpret all the provisions of the present Charter at the request of a state party, an institution of the OAU [now African Union] or an African organisation recognised by the OAU [African Union].
- 4 [to] perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

The African Commission further is empowered to receive and adjudicate upon individual communications alleging the violation by a state party of the rights and freedoms under the African Charter.³ Article 62 of the African Charter obliges state parties to submit to the African Commission periodic reports on the measures taken to protect and promote the rights and freedoms under the African Charter. The African Charter, unlike, for example, the Protocol Relating to the Establishment of the Peace and Security Council of the Africa Union,⁴

1 Art 30 African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 October 1986; OAU Doc CAB/LEG/67/3 Rev 5 (1982) 21 *International Legal Materials* 58; reprinted in C Heyns & M Killander (eds) *Compendium of key human rights documents of the African Union* (2010) 29.

2 See F Ouguerouz *The African Charter on Human and Peoples' Rights – A comprehensive agenda for human dignity and sustainable democracy in Africa* (2003); F Viljoen *International human rights law in Africa* (2007).

3 Arts 55 & 56.

4 Protocol Relating to the Establishment of the Peace and Security Council of the African Union. Para 13 of the Preamble provides that African leaders are aware 'of the fact that the development of strong democratic institutions and culture, observance of human rights and the rule of law ... are essential for the promotion of collective security, durable peace and stability, as well as for the prevention of conflicts'. Art 3(f) provides that one of the objectives of the Peace and Security Council of the African Union is to 'promote and encourage ... the rule of law ... as part of efforts for preventing conflicts'. Art 4(c) provides that one of the principles

does not expressly use the phrase ‘rule of law’ anywhere. Relying on the practice of the African Commission, the author discusses measures adopted by the African Commission to promote and protect the rule of law in Africa in line with its mandate under the African Charter. The discussion focuses on the African Commission’s understanding of the concept of the rule of law as expressed in the resolutions it has passed, in the individual communications it has adjudicated upon, and in the promotional missions it has undertaken. The article also highlights the understanding of the state parties to the African Charter of the meaning of the rule of law as evidenced in the reports submitted to the African Commission. Against that backdrop, the author highlights major aspects of the concept of the rule of law as understood by the African Commission and African states. The African countries studied in the article have been chosen because their periodic reports to the African Commission contain the phrase ‘rule of law’. Therefore, the author has not considered factors such as regional representation or attempted to strike a balance between countries emerging from conflicts and those that have never experienced conflict.

2 Rule of law

The phrase ‘rule of law’ was coined by Dicey in his book *Introduction to the study of the law of the constitution*, published in 1885.⁵ The definition or description or use of the phrase ‘rule of law’ is, to borrow words used in a different context, ‘sort of a chameleon ... [which] by necessity changes the colour of its skin ... depending on where it finds itself’.⁶ This explains why the precise meaning of what constitutes the ‘rule of law’ is still being contested⁷ and is likely to be contested for as long as the phrase remains relevant. Thus, different people have approached it from different angles. For example, some people have

by which the Peace and Security Council will be guided is the ‘respect for the rule of law’. Under art 5(2)(g), one of the criteria for a member state to be elected to the Peace and Security Council is that that state has respect for the rule of law.

5 See M Neumann *The rule of law: Politicising ethics* (2002) 1; S Beaulac ‘The rule of law in international law today’ in G Palombella & N Walker (eds) *Relocating the rule of law* (2009) 197-198.

6 It adopted that phrase from an article which has very little to do with the discussion of the concept of rule of law, at least directly. See P Gaeta ‘When is the involvement of state officials a requirement for the crime of torture?’ (2008) 6 *Journal of International Criminal Justice* 183.

7 For a detailed discussion of the various elements of the rule of law, see A Bedner ‘An elementary approach to the rule of law’ (2010) 2 *Hague Journal of the Rule of Law* 48-74. See also M Krygier ‘The rule of law: Legality, Teleology, sociology’ in Palombella & Walker (n 5 above) 49; Neumann (n 5 above) 23-50.

approached it from a legal or human rights perspective,⁸ others from a political or philosophical perspective,⁹ and there are those who have approached it from a sociological perspective.¹⁰ It is not the present author's intention to invent a definition of the concept. For purposes of giving meaning to the phrase, I rely on the meanings given to the phrase by Dicey, who wrote that the rule of law 'has three meanings, or may be regarded from three different points of view'.¹¹ According to Dicey, the first point from which the rule of law may be regarded is 'the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power'.¹² By this he meant¹³

[t]hat no man is punished or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint.

The second meaning of the rule of law, according to Dicey, suggests the principle of equality before the law in the sense that 'every man, whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals'.¹⁴ Lastly, Dicey was of the view that the rule of law means that 'the laws of the constitution ... are not the source but the consequence of the rights of individuals, as defined and enforced by courts' and that:¹⁵

We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before courts; whereas under many foreign constitutions the security (such as it is) given to the rights of individuals results, or appears to result, from the general principles of the constitution.

The above attempts to give meaning to the phrase 'rule of law' show that Dicey was not attempting to devise a definition of universal application.

8 Eg, T Bingham *The rule of law* (2010), who gives the history of the rule of law from the Magna Carta of 1215 to the Universal Declaration of Human Rights (10-32). The author also discusses the rule of law by looking at issues such as accessibility of the law, human rights, dispute resolution and the role of parliament. See DM Beatty *The ultimate rule of law* (2004), where the author analyses judgments from courts in different countries to discuss how the rule of law has been protected by such courts on issues such as liberty, equality, fraternity and proportionality.

9 Eg, it has been argued that 'politically-charged concepts like the rule of law are not defined for lexicographic or semantic purposes; they are defined according to an agenda.' See Neumann (n 5 above) 23.

10 Krygier (n 7 above) 45-69.

11 As quoted in Beaulac (n 5 above) 199.

12 As above.

13 As above.

14 As above.

15 As above.

The definition he came up with was based on his understanding of the rule of law in England.¹⁶ Whether his definition is accepted or rejected, one fact remains difficult, if not impossible, to dispute: One of the elements that he included in his definition has come to be accepted, by almost all those who have attempted to give meaning to the rule of law, as an important indicator for the existence of the rule of law – the issue of human rights. The fact that human rights are a strong pillar in Dicey's definition of the rule of law should be understood in the context in which the phrase was developed. Dicey was analysing the 'constitutional law' of England and human rights have been part and parcel of that law at least since the Magna Carta in 1215.¹⁷ Therefore, human rights are inseparable from the rule of law. This is the case whether the rule of law is seen from a social, political, legal or economic perspective. Our attention now shifts to a discussion of the measures taken by the African Commission to protect the rule of law in Africa.

3 Resolutions

The African Commission has promoted human rights in Africa by passing resolutions on issues such as HIV/AIDS, access to essential medicine, and the right to a fair trial. Below, the article examines the way in which the African Commission has used the phrase 'rule of law' in these resolutions.

In its Resolution on the Establishment Committee on the Protection of People Living with HIV and Those at Risk, the African Commission noted that¹⁸

in circumstances where the rule of law and human rights are not respected as an integrated part of society, the most vulnerable groups within that society are often denied the level of protection they require and hence, are exposed to increased vulnerability.

That observation shows that the African Commission holds the view that the rule of law is critical in the fight against HIV/AIDS in Africa and in the protection of the rights of people living with HIV/AIDS. The above statement also shows that the African Commission holds the view that the rule of law is one thing and the protection of human rights is another, but that the two are inseparable in the protection of the most vulnerable. In the case of HIV/AIDS, it cannot be overemphasised that the protection of human rights is indeed an important factor if HIV/AIDS is to be fought in Africa. People living with HIV/AIDS should not

¹⁶ Krygier (n 7 above) 52-55.

¹⁷ T Bingham *The rule of law* (2010) 10-32.

¹⁸ Resolution on the Establishment of a Committee on the Protection of the Rights of People Living with HIV, and Those at Risk, Vulnerable to and Affected by AIDS, ACHPR/Res 163(XLVI) 2010.

be discriminated against and should have access to medicines needed to treat the symptoms caused by the disease.

The African Commission also seems to draw a distinction between the rule of law, democracy and human rights. In its resolution on human rights defenders in Africa, it recognised their 'crucial contribution ... in promoting human rights, democracy and the rule of law in Africa'.¹⁹ Likewise, in its resolution on Nigeria, it called upon the military government 'to ensure respect for human rights and the rule of law'.²⁰ In its resolutions on the political situation in The Gambia and Comoros, the African Commission indicated that undemocratic changes of government threaten the rule of law.²¹ The African Commission draws a distinction between the rule of law, on the one hand, and the observance of international standards applicable to a fair trial, on the other. In its resolution on The Gambia, it called upon the military government to observe 'the rule of law, as well as the recognised international standards of fair trial and the treatment of persons in custody'.²² The above resolutions show that the African Commission views the rule of law as distinct but inseparable from human rights and democracy. They also show that the African Commission holds the view that for a government to protect human rights and to observe the rule of law, that government does not have to be one that came to power democratically. Even military governments that come to power as a result of disregarding the supreme law of the land – as almost all constitutions prohibit undemocratic changes of government – have to respect the rule of law. This requires such governments to, amongst other things, protect and promote people's rights that are guaranteed under domestic as well as international law. Of course, the fact that the government was elected into power does not of in itself mean that it will uphold human rights. Africa is not short of examples of governments that came to power through elections but which have violated peoples' rights. However, military governments, as opposed to democratically-elected governments, are not accountable to the electorate because their acquisition and retention of power do not depend on the electorate.

As in the case of human rights and democracy, the African Commission also appears to reason that the rule of law is distinct from the independence of the judiciary. In its resolution on elections in Africa, it calls upon African countries to '[r]espect the rule of law and the independence of the *judiciary* which *is* essential for the realisation

19 Resolution on the Protection of Human Rights Defenders in Africa, ACHPR/Res 69(XXXV)04, Preamble, para 1.

20 Resolution on Nigeria, ACHPR/Res 16(XVII)95, para iv.

21 Resolution on The Gambia, ACHPR/Res 17(XVII)95, Preamble para 2; Resolution on the Situation in Comoros, ACHPR/Res 34(XXV)99, Preamble para 5.

22 Resolution on The Gambia, ACHPR/Res 13(XVI)94, para 3(iii).

of free and fair elections in Africa'.²³ Whether it is the independence of the judiciary that contributes to the rule of law or whether it is the observance of the rule of law that contributes to an independent judiciary is not a very easy question to answer. Nevertheless, what is difficult to dispute is that an independent judiciary is critical to the protection of some human rights, such as freedom of liberty and, as indicated earlier, the protection of human rights is an important element of the rule of law as defined by Dicey. Therefore, the independence of the judiciary remains an example of the rule of law. People should be confident that the judiciary will resolve their disputes independently and impartially. Otherwise people will take the law into their own hands.²⁴

The above examples show that the African Commission is of the view that the rule of law is distinct from democracy, human rights, justice and the independence of the judiciary. Whether that is the case is debateable, but this serves as an example of the complex nature not only of the meaning of the concept of the rule of law, but also of its application.

4 Communications

As mentioned earlier, the African Commission is empowered by the African Charter to hear individual and inter-state communications alleging the violation of the rights in the African Charter. Since its establishment, the African Commission has heard several cases in which it has applied or interpreted the different provisions of the African Charter. In some of these cases, the African Commission has expressly used the term 'rule of law.' These decisions are highlighted to have an understanding of the different ways through which the concept of the rule of law has been used in this context. In *Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development in Africa v Zimbabwe*,²⁵ the applicants argued, *amongst others*, that by deporting Mr Meldum although the High Court had ordered that he should not be deported, the state violated article 26 of the African Charter and that disobeying court orders was one of the signs of the lack of the rule of law in Zimbabwe.²⁶

23 Resolution on Elections in Africa, ACHPR/Res 133(XXXXIII)08, para 1 (emphasis in original).

24 Of course, the law in question should not be perceived as oppressive, at least by the majority, and should also not be discriminatory against the minority. However, this debate is outside the ambit of this article.

25 (2009) AHRLR 268 (ACHPR 2009) para 118.

26 *Zimbabwe Lawyers for Human Rights* (n 25 above) para 78.

In finding that Zimbabwe had violated article 26 of the African Charter, the African Commission held, amongst others, that²⁷

[i]t is impossible to ensure the rule of law, upon which human rights depend, without guaranteeing that courts and tribunals resolve disputes both of a criminal and civil character free of any form of pressure or interference. The alternative to the rule of law is the rule of power, which is typically arbitrary, self-interested and subject to influences which may have nothing to do with the applicable law or the factual merits of the dispute. Without the rule of law and the assurance that comes from an independent judiciary, it is obvious that equality before the law will not exist.

There are several points of relevance in the above quotation. One, human rights depend on the rule of law; two, the rule of law can only be guaranteed when courts are independent and impartial;²⁸ three, the rule of law prevents the arbitrary exercise of power; and four, equality before the law is an integral element of the rule of law. This shows that the African Commission holds the view that the protection of human rights, the independence of the judiciary and the rule of law are inseparable. The African Commission is of the view that for a state to be democratic, it has to be governed by the rule of law and that a state that respects the rule of law has to allow people to exercise their human rights. It held expressly that ‘the legitimate exercise of human rights does not pose dangers to a democratic state governed by the rule of law’.²⁹ In *Article 19 v Eritrea*, where the government detained several journalists *incommunicado*, the African Commission, in finding that the Eritrean government had violated the African Charter, held that³⁰

[n]o political situation justifies the wholesale violation of human rights; indeed general restrictions on rights such as the right to free expression and to freedom from arbitrary arrest and detention serve only to undermine public confidence in the rule of law and will often increase, rather than prevent, agitation within a state.

27 *Zimbabwe Lawyers for Human Rights* (n 25 above) para 118. In *Bissangou v Republic of Congo* (2006) AHRLR 80 (ACHPR 2006), the African Commission held that ‘by virtue of the rule of law’, it is incumbent upon government ministers to honour court judgments; see para 71. The Minister of Finance had refused to pay the applicant’s money although the Court had ordered that the applicant should be compensated by the government as a result of his property being damaged and stolen by government soldiers.

28 In fact, the African Commission expressly held that ‘[t]he independence of the judiciary is a crucial element of the rule of law’. See *Article 19 v Eritrea* (2007) AHRLR 73 (ACHPR 2007) para 66. It also held that ‘where the judiciary cannot function properly the rule of law must die’. See *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v Zimbabwe* (2009) AHRLR 235 (ACHPR 2009) para 89.

29 *Amnesty International & Others v Sudan* (2000) AHRLR 297 (ACHPR 1999) para 79. The African Commission held that the illegal detention and torture of opposition leaders by the Sudanese government violated several provisions of the African Charter.

30 *Article 19 v Eritrea* (n 28 above) para 108.

In the above quotation, the African Commission takes that view that, in order to prevent agitation in a given state, the government must respect human rights, otherwise people's confidence in the rule of law will be undermined. This observation is important because in cases where people feel that a government in question does not respect the rule of law and in particular their rights, some of them could resort to unconstitutional means to change such a government. This has been the case in many African countries, for example in Uganda, where President Museveni started a guerrilla war on, amongst other grounds, the fact that the previous governments had no respect for the rule of law; Sudan, leading to secession in 2011; the Democratic Republic of Congo, when Mobutu was overthrown; and Rwanda, where the Tutsi rebelled against the Hutu government on the basis that they were being discriminated against. This is because people suspect that elections would never be free and fair if organised by a government that has no respect for human rights.

In *Constitutional Rights Project and Another v Nigeria*, where the government arbitrarily detained those who had protested against the rigging of elections, the African Commission found that Nigeria had violated the African Charter and held that '[n]o situation justifies the wholesale violation of human rights. In fact, general restrictions on rights diminish public confidence in the rule of law and are often counter-productive.'³¹ In the two decisions above, the African Commission reasons that a respect for human rights strengthens public confidence in the rule of law and that a respect for the rule of law prevents agitation within a state and that a government's failure to uphold the rule of law is a recipe for political instability. The African Commission seems to be of the view that justice differs from the rule of law. In *Kenneth Good v Republic of Botswana*, where the applicant, who was a university professor, published an article critical of the government and was deported without being given a chance to be heard, the African Commission held that³²

[i]t makes a mockery of justice and the rule of law for a person legally admitted to a country to all of a sudden be told to leave against his will and he/she is not given reasons for the expulsion.

Whether the rule of law can be distinguished from justice is debateable. Justice means, amongst other things, that people should have a fair trial which complies with the principles laid down in international law, and that a government should respect court orders. It has been shown above that Dicey's rule of law is founded on three principles, including the supremacy of the law and a respect for human rights. Therefore,

31 *Constitutional Rights Project & Another v Nigeria* (2000) AHRLR 191 (ACHPR 1998) para 58.

32 Communication 313/05, *Kenneth Good v Republic of Botswana*, 28th Activity Report para 193.

the administration of justice in accordance with the law is an example that the rule of law has taken root or is in the process of taking root.

For the rule of law to be upheld, the African Commission held that people must know which conduct is prohibited by law and which is not. Laws should not have a retroactive effect. The African Commission stated that '[i]f laws change with retroactive effect, the rule of law is undermined since individuals cannot know at any moment if their actions are legal'.³³ The African Commission's view is that it is the responsibility of the state to restore and maintain the rule of law.³⁴ The African Commission also holds the view that for a trial or hearing to have been held in accordance with the rule of law, such a trial or hearing must be in line with the African Charter.³⁵ In other words, if a trial is not conducted in accordance with the African Charter, that trial cannot be considered to have been in line with the rule of law. In assessing whether a state in question upholds the rule of law, the African Commission will conduct its assessment on the basis of the provisions of the African Charter and international human rights standards.

5 State party reports

As mentioned earlier, under article 62 of the African Charter, state parties are obliged to submit periodic reports to the African Commission on the measures taken to protect and promote the rights and freedoms under the African Charter. Although, as mentioned earlier, the African Charter does not expressly oblige state parties to observe the 'rule of law', some state parties have indicated in their reports to the African Commission the measures they have taken to promote or observe the rule of law in their jurisdictions. The author highlights a few of the state parties' periodic reports to show the context in which the phrase 'rule of law' has been used and also to indicate the measures that those state parties have taken to promote what they call the rule of law. After an outline of the measures taken by the respective state parties to promote the rule of law, the author analyses those reports.

In its Third and Fourth Periodic Reports, Algeria notified the African Commission that it had done some of the following to 'consolidate the rule of law': Fresh elections were held; human rights protection mechanisms were strengthened; the judiciary was reformed to ensure

33 *Media Rights Agenda & Others v Nigeria* (2000) AHRLR 200 (ACHPR 1998) para 59.

34 *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006) para 67. See *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v Zimbabwe* (n 28 above) para 176.

35 *Amnesty International v Zambia* (2000) AHRLR 325 (ACHPR 1999) para 42.

its independence;³⁶ a new constitution was enacted which ‘enshrined freedoms and strengthened political pluralism, the separation of powers and the independence of the judiciary’; and several pieces of legislation were enacted to guarantee fundamental rights and freedoms such as freedom of association, political participation and access to information.³⁷

In its Second Periodic Report to the African Commission, Burkina Faso writes that ‘the report seeks to be exhaustive in presenting developments in the rule of law in Burkina Faso and the new measures adopted in the area of protecting and promoting the rights provided for under the African Charter’.³⁸ The report indeed explains in detail the measures taken to strengthen the rule of law in Burkina Faso, which include the presidential elections that were held; the official investigation of the circumstances surrounding the death of a prominent journalist; political parties’ activities; the measures taken to deal with the political crises in the country; the nomination of the Council of Elders to bring about peace and reconciliation in the country; government’s alliances with political parties; the amendments to the Constitution; amendment of the electoral laws; parliamentary reform; and the decentralisation of power.³⁹ The African Commission was also informed that the government had established the Ministry for the Promotion and Protection of Human Rights as a ‘new agent of democracy and the rule of law, which is required to play a vital role in ensuring the entrenchment of democratic governance, particularly with a view to instituting a culture of peace and human rights in the country’.⁴⁰ The government reported that the establishment of a compensation fund for victims of political violence ‘contributed to an appeasement of the political and social life of the country and thus contributed to the strengthening of the rule of law’.⁴¹ It further reported that⁴²

[t]he rule of law and political life witnessed positive developments ... between 1998 and 2002 ... which have served to strengthen the democratic process and the foundations of a constitutional state. This has led to a consolidation of the situation of rights, duties and freedoms.

The rule of law is thus not only about the independence of the judiciary and the protection of human rights. It is also about, in Burkina Faso’s

36 Peoples’ Democratic Republic of Algeria’s Third and Fourth Periodic Reports to the African Commission on Human and Peoples’ Rights (August 2006) 4.

37 Algeria’s Third and Fourth Periodic Reports (n 36 above) 5-6.

38 Periodic Report of Burkina Faso to the African Commission on Human and Peoples’ Rights on the Implementation of the African Charter on Human and Peoples’ Rights October 1998-December 2002 (July 2003) 5.

39 Periodic Report of Burkina Faso (n 38 above) 7-13.

40 Periodic Report of Burkina Faso (n 38 above) 19.

41 As above.

42 As above.

view, strengthening and establishing state institutions, strengthening human rights, holding elections and amending legislation.

In its Second Periodic Report to the African Commission, Cameroon addressed the issue of the right to freedom from discrimination and, in particular, the rights of people in same-sex relationships, and wrote that it was not 'out of place to take a second look at the rule of law in Cameroon with regard to this sensitive issue'.⁴³ The report added that the 'condemnation of homosexuality' is in line with Cameroon's national and international human rights obligations and in particular article 12 of the Universal Declaration of Human Rights, article 26 of the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.⁴⁴ The report added that⁴⁵

legal action is taken against them [homosexuals] for engaging in practices that are in contravention of both the existing legislation as well as the things that the democratic Cameroonian society of today still considers as good morals.

The Cameroonian example shows, *inter alia*, that the rule of law can actually be invoked to violate widely-accepted rights such as the right to be free from discrimination on the ground of one's sexual orientation.

In its Initial and Cumulative Report, the Central African Republic informed the African Commission that 'in showing its firm determination to consolidate the rule of law and the development of the individual, [it] condemns the exploitation of man in all its forms by ratifying several international human rights instruments'.⁴⁶ The report adds that the Preamble to the 1986 Constitution reaffirms the 'principle of liberty' by providing that 'the Republic is determined to develop the rule of law which would guarantee its inhabitants the security of their persons and their property, which would protect the weakest and allow each individual to freely exercise his/her rights'.⁴⁷ The report adds that when the Constitution was amended in January 1995, the Preamble was also amended to proclaim that the state 'resolved, to develop the rule of law based on genuine pluralist democracy ... and with the full exercise of fundamental rights and liberties'.⁴⁸ While reporting on the

43 Second Periodic Report on Cameroon within the Framework of the African Charter on Human and Peoples' Rights (report not dated) para 93.

44 Second Periodic Report on Cameroon (n 43 above) para 94.

45 As above.

46 See Initial and Cumulative Report of the Central African Republic on the African Charter on Human and Peoples' Rights (January 2006) 27.

47 Initial and Cumulative Report of the Central African Republic on the African Charter on Human and Peoples' Rights (January 2006) 27.

48 As above. The report also indicates that the Central African Republic 'by subscribing to the relevant provisions [*sic*] of the Charter solemnly re-affirmed in the preamble to the Constitution on 27th December 2004 that, *determined to build a state with the rule of law based on pluralism [*sic*] democracy guaranteeing the security of individuals and their property, the protection of the weakest, notably vulnerable persons ...*' 41 (emphasis in original).

measures taken to give effect to article 7 of the African Charter which guarantees the right to a fair trial, the Central African Republic wrote that⁴⁹

[j]ustice is what best characterises the rule of law for which the Central African Republic aspires so deeply. Thus the necessary guarantees for a fair judgment which are enshrined in the Charter are recognised by the Central African Republic.

The report thereafter outlines the legislative, administrative and judicial measures taken to ensure that the right to a fair trial is guaranteed to all individuals.⁵⁰

In its Periodic Report to the African Commission, Benin reported that '[s]trengthened good governance and the improvement of the legal and institutional framework are all steps which will go a long way to usher in true democracy and rule of law in Benin'.⁵¹ The Democratic Republic of Congo in its Initial Report informs the African Commission that the Mobutu dictatorial government was overthrown by the Alliance of Democratic Forces for the Liberation of Congo for, *inter alia*, the latter to institute 'a democratic system and the rule of law'.⁵² The Democratic Republic of Congo also informed the African Commission that a National Human Rights Conference of the Democratic Republic of Congo was held in June 2001 in Kinshasa and one of the tasks assigned to this forum was to '[r]eaffirm the Democratic Republic of Congo's will to respect, promote and protect human rights with a view of facilitating the consolidation of the rule of law'.⁵³ The delegates at the National Human Rights Conference adopted the Congolese Charter on Human and Peoples' Rights which, *inter alia*,⁵⁴

lays particular emphasis on the notions of equality and non-discrimination, particularly in relations between men and women – and establish the priority of the rule of law in relations to the restrictions or other exceptions to be added to it.

The Ethiopian government informs the African Commission in its Combined Initial and Fourth Periodic Reports that '[f]or the last decade and half, the government and the people have travelled a long way towards respect for the rule of law, human rights protection and

49 Initial and Cumulative Report of the Central African Republic (n 47 above) 28.

50 Initial and Cumulative Report of the Central African Republic (n 47 above) 28-29.

51 See Periodic Report of the Republic of Benin on the Implementation of the Rights and Freedoms Enshrined in the African Charter on Human and Peoples' Rights (2008) 29.

52 Initial Report of the Democratic Republic of Congo to the African Commission on Human and Peoples' Rights (April 2002) 12.

53 Initial Report of the Democratic Republic of Congo (n 52 above) 24.

54 Initial Report of the Democratic Republic of Congo (n 52 above) 32.

democratisation'.⁵⁵ The government adds that in 1995 a new Constitution was enacted 'that guarantees the protection of human rights, democracy and rule of law'.⁵⁶ The report adds that the judiciary is independent and 'serves as a balancing power to the executive, by providing the "checks and balances" which are decisive for the observance of the rule of law, good governance and democratisation'.⁵⁷ The report also reveals the fact that in 2004 the government launched the Public Sector Capacity Building Programme which includes as one of its sub-programmes the Justice Sector Reform Programme whose 'objective is to promote the rule of law as well as efficient and effective functioning of the justice system as part of Ethiopia's broader democratisation and public sector development process'.⁵⁸ The government also reported that it had established the Institute of the Ombudsman 'to oversee the protection of human rights and freedoms of citizens by the executive, to ensure good governance and rule of law and to duly rectify or prevent unjust decisions and orders of executive organs and officials'.⁵⁹

The government of Madagascar reported to the African Commission that it had formulated the Madagascar Plan of Action 2007–2012 on responsible government⁶⁰ with one of its 'challenges' being to 'strengthen the rule of law'. The priority projects and activities for this challenge are as follows: to make punishment within the legal system harsher for corruption; to pursue the review of laws; to put in place simplified legal procedures to ensure rapid and transparent justice delivery; to continue clearing the backlog of cases; to review case laws and regulations by an independent committee including the Economic Development Board of Madagascar; to boost the observation, monitoring and protection of human rights by the National Commission and Office of the Ombudsman; to amend laws to ensure that detainees are not imprisoned without trial for more than a year (30 days for minor offences); to increase financing to improve medical and health conditions within prisons and to develop efficient prison camps to ensure proper nutrition; and to create an educational reintegration system for juvenile delinquents.⁶¹

The Mauritian government reported to the African Commission that the Constitution of Mauritius 'rests on two fundamental tenets:

55 Federal Democratic Republic of Ethiopia's Combined Report (Initial and Four Periodic Reports) to the African Commission on Human and Peoples' Rights (report not dated) para 1.

56 Federal Democratic Republic of Ethiopia's Combined Report (n 55 above) para 12.

57 Federal Democratic Republic of Ethiopia's Combined Report (n 55 above) para 40.

58 Federal Democratic Republic of Ethiopia's Combined Report (n 55 above) para 443.

59 Federal Democratic Republic of Ethiopia's Combined Report (n 55 above) para 473.

60 Madagascar Periodic Report in Accordance with the African Charter on Human and Peoples' Rights (2008) para 297.

61 Madagascar Periodic Report (n 60 above) para 299.

the rule of law and the doctrine of separation of powers';⁶² that the Mauritian Supreme Court held that 'the right to personal liberty ... is at the heart of all political systems that purport to abide by the rule of law and protects the individual against arbitrary detention'.⁶³ The government also reported that during the time when Mauritius held the chair of the Southern African Development Community, 'it often impressed upon leaders and the governments of the region the necessity to adhere to the principles of democracy, good governance and the rule of law'.⁶⁴ The government also reported that, under Mauritian law, the right to freedom of expression has to be exercised in a manner that is respectful of the integrity and independence of the judiciary 'given the particular role, which the judiciary has always been called upon to play in systems which are based on the rule of law'.⁶⁵ Niger reports that since 1999 it has enjoyed 'the rule of law as instated at the end of the National Conference in 1991' that adopted the new Constitution.⁶⁶ On the issue of the administration of justice, Niger reported that '[j]ustice is rendered on the national territory on behalf of the people and in strict compliance with the rule of law as well as the rights and freedoms of citizens'.⁶⁷ Niger also reported that the Ministry of Justice established a⁶⁸

legislative reform commission on criminal, civil and commercial law. The mission of this commission is to amend existing texts in such a way as ... to introduce concepts in line with the democratic context of the state, and the rule of law.

After outlining several court decisions in which the judges held that the African Charter was part and parcel of Nigerian law, the Nigerian government reported that 'it goes without saying that the observance of human rights is a tribute to the rule of law'.⁶⁹ The report added that rebels in some parts of the country 'fighting against the rule of law' were responsible for displacing thousands of people.⁷⁰ South Africa's First Periodic Report cites a Constitutional Court decision in which the Court held that 'under the rule of law' citizens and non-citizens 'are entitled to rely on the state for the protection and enforcement of their

62 The Republic of Mauritius's Second, Third, Fourth and Fifth Combined Reports under the African Charter on Human and Peoples' Rights (2008) 3.

63 Mauritius's Second, Third, Fourth and Fifth Combined Reports (n 62 above) 12.

64 Mauritius's Second, Third, Fourth and Fifth Combined Reports (n 62 above) 66.

65 Mauritius's Second, Third, Fourth and Fifth Combined Reports (n 62 above) 80.

66 Initial and Periodic Report of the Republic of Niger to the African Commission on Human and Peoples' Rights on the Implementation of the African Charter on Human and Peoples' Rights 1988-2002 (report not dated) 5.

67 Initial and Periodic Report of the Republic of Niger (n 66 above) 6. See also 22.

68 Initial and Periodic Report of the Republic of Niger (n 66 above) 84.

69 Nigeria's Third Periodic Country Report: 2005-2008 on the Implementation of the African Charter on Human and Peoples' Rights (September 2008) 29.

70 Nigeria's Third Periodic Country Report (n 69 above) 75.

rights'⁷¹ and the High Court decision in which the judge issued an interdict against unlawful land occupiers, basing his decision on the fact that the Court 'had to apply the law of the land in the interests of democracy, the rule of law, equality and precedent'.⁷²

In its Seventh Periodic Report, Rwanda informed the African Commission that the government was in the process of amending several pieces of legislation largely to strengthen 'principles such as the separation of powers, the independence of the judiciary and the rule of law'.⁷³ Rwanda added that, since coming into power in 1994, the government has 'embarked on a process of reconciliation, of the reconstruction of the rule of law and of democratisation'⁷⁴ and that the establishment of the traditional *Gacaca* courts to expeditiously deal with cases of genocide was meant to '[e]radicate for good the culture of impunity whilst instilling the rule of law in the national society'.⁷⁵ The government supports organisations of genocide survivors because they, *inter alia*, support 'the government in its efforts to instil the rule of law and to translate as faithfully as possible the aspirations of the population throughout the participative democratisation process'.⁷⁶ The government also reports in the context of the right to liberty that '[r]espect for the fundamental principle of the rule of law requires the government to intensify the fight against injustice'.⁷⁷ In its Eighth Periodic Report, Rwanda informed the African Commission that a new Constitution had been enacted in 2003 '[e]stablishing the rule of law based on the respect of fundamental liberties and human rights'.⁷⁸ Rwanda also informs the African Commission that new pieces of legislation had been enacted 'strengthening principles such as independence of the judiciary and promoting the rule of law'.⁷⁹ The government reports that it has ratified several international, regional and sub-regional human rights instruments because 'Rwanda ... [is] one of the countries which want to establish the rule of law'.⁸⁰ In its Combined Ninth and Tenth Reports to the African Commission, Rwanda

71 Republic of South Africa's First Periodic Report on the African Charter on Human and Peoples' Rights (2001) 57.

72 South Africa's First Periodic Report (n 71 above) 62.

73 Seventh Periodic Report of Rwanda to the African Commission on Human and Peoples' Rights 1999-2002 (February 2003) 7.

74 Seventh Periodic Report of Rwanda (n 73 above) 8. See also 26, where the government reports that it was engaged in a 'permanent ... to overcome certain difficulties and pursue the re-establishment of the rule of law in general, and to promote respect for human rights in particular'.

75 Seventh Periodic Report of Rwanda (n 74 above) 10.

76 Seventh Periodic Report of Rwanda (n 74 above) 19.

77 Seventh Periodic Report of Rwanda (n 74 above) 27.

78 Eighth Periodical Report of Rwanda to the African Commission on Human and Peoples' Rights 2002-2004 (March 2005) 9.

79 Eighth Periodical Report of Rwanda (n 78 above) 11.

80 Eighth Periodical Report of Rwanda (n 78 above) 27.

states that it has implemented some of the following initiatives in its effort to strengthen the rule of law: the representation of the youth, women and the disabled at various political levels; the decentralisation of policy to facilitate the active participation of citizens to fight poverty in planning and managing their own development process; the establishment of community courts (*Gacaca*) to expeditiously bring to trial genocide suspects; the establishment of self-help community projects; and community policing.⁸¹ The government assures the African Commission that '[t]he country is committed to being a capable state, characterised by the rule of law that supports and protects all its citizens without discrimination'.⁸² The government informs the African Commission that its Constitution obliges it to build 'a state governed by the rule of law, a pluralistic democratic government'.⁸³

In its Second Periodic Report, Sudan reported that '[t]he 1991 criminal code includes a series of guarantees relating to the custody and treatment of prisoners which constitute together what should be called the rule of law'.⁸⁴ In the same report, Sudan explains what it understands by the phrase 'the rule of law' by writing:⁸⁵

The rule of law includes the presumption of innocence, non-retroactivity of criminal laws, fair trial standards, the right to be released on presentation of sureties, the right to defence, the right to appeal, to call witnesses and to examine the prosecution witnesses, and the right to be assisted by an interpreter.

In its Third Periodic Report, Sudan reported to the African Commission that its Constitution 'has established a deeply-rooted foundation for the system of justice whose pillar is the rule of law[,] independent [*sic*] of the judiciary as well as the judges themselves ...'.⁸⁶ The report adds that the law prohibits conduct aimed at compromising the independence of the judiciary because 'they are bound to observe the provisions of the Constitution by the dispensation of justice and application of the principle of the rule of law'.⁸⁷ The report adds that the 'Constitution provides for the principle of the rule of law and imposes on the judges to protect the principle' and to dispense

81 Ninth and Tenth Periodic Report of the Republic of Rwanda under the African Charter on Human and Peoples' Rights 2005-July 2009 (July 2009) para 106.

82 Ninth and Tenth Periodic Report of the Republic of Rwanda (n 81 above) para 181.

83 Ninth and Tenth Periodic Report of the Republic of Rwanda (n 81 above) para 219.

84 Third Periodic Report of Sudan Pursuant to Article 62 of the African Charter on Human and Peoples' Rights: It Comprises the Required Reports up to April 2003 (April 2003) para 31.

85 Periodic Report of Sudan (n 84 above) para 32.

86 Third Periodic Report of the Republic of the Sudan under Article 62 of the African Charter on Human and Peoples' Rights [*sic*] (May 2006) para 29.

87 Third Periodic Report of the Republic of the Sudan (n 86 above) para 59.

justice impartially and without fear or favour.⁸⁸ It reports that the Constitution subjects all the organs to state to the rule of law;⁸⁹ that the Ministry of Justice Act was enacted in 1983 and it requires the Ministry to 'endeavour to promote the principle of the rule of law [and the] provision of a conclusive justice'.⁹⁰

The Ugandan government reported to the African Commission that in 1986 it had established a commission of inquiry to investigate the human rights violations and 'breaches of the rule of law ... committed against persons in Uganda' by past dictatorial regimes.⁹¹ The report added that 'ordinary Ugandans welcomed the inquiry with enthusiasm, regarding it as an indication of the government's commitment to upholding human rights and the rule of law'.⁹² The government adds that there has not been a state of emergency in Uganda for many years because '[t]he rule of law is ... today prevalent in Uganda' and the Constitution clearly stipulates the circumstances under which the state of emergency may be declared and the rights and freedoms that must be protected during the subsistence of the state of emergency.⁹³

Zambia reports to the African Commission that in 2003 it established a Constitutional Review Commission with the mandate to, *inter alia*, 'recommend appropriate ways and means of entrenching and protecting human rights, the rule of law and good governance in the Constitution',⁹⁴ and that '[a]rticle 113(d) of the Constitution ... makes it a duty of every citizen to promote democracy and the rule of law'.⁹⁵

Zimbabwe reported to the African Commission that human rights organisations 'which support efforts to increase public awareness of human rights principles and the rule of law operate without hindrance';⁹⁶ that the government's commitment and adherence 'to the respect of human and peoples' rights and the rule of law remain pivotal to its domestic and foreign policy';⁹⁷ and that 'Zimbabwe will continue to actively participate in all international fora whose aim is to advance the respect of human rights and the rule of law'.⁹⁸ The

88 Third Periodic Report of the Republic of the Sudan (n 86 above) para 160.

89 Third Periodic Report of the Republic of the Sudan (n 86 above) para 88.

90 Third Periodic Report of the Republic of the Sudan (n 86 above) para 156.

91 See The Republic of Uganda Report to the [African] Commission on Human and Peoples' Rights Presented at the 39th Ordinary Session of the [African] Commission on Human and Peoples' Rights Banjul, The Gambia (May 2006) para 10.6.

92 Uganda Report (n 91 above) para 10.7.

93 Uganda Report (n 91 above) para 27.21.

94 Zambia's Initial Report to the African Commission on Human and Peoples' Rights (not dated) para 119(b).

95 Zambia's Initial Report (n 94 above) para 311. See also para 537.

96 Advance Copy of the Summary of Zimbabwe's First Report to the African Commission on Human and Peoples' Rights [sic] (1992) para 6.1.

97 Advance Copy of the Summary of Zimbabwe's First Report (n 96 above) 20.

98 As above.

government of Zimbabwe reported to the African Commission that one of the challenges it faced was that⁹⁹

Britain and its allies have associated land reform with lawlessness, emphasising the belief that the rule of law can only exist in Zimbabwe through the restitution of individual property rights to white commercial farmers.

The government reported (or complained?) to the African Commission that ‘the British anti-Zimbabwe campaign has peddled falsehoods about the “rule of law”, human rights and a wide range of “governance” issues that it claims to be violated by the Zimbabwean government’.¹⁰⁰

What the above examples highlight is that African countries are committed to taking measures that promote the rule of law. Activities undertaken by these states range from holding elections, amending legislation, ensuring the independence of the judiciary, and fighting corruption to establishing state institutions to promote democracy, and ratifying international and regional human rights instruments. The fact that all the countries report on the measures taken to protect and promote human rights as a sign that they are observing the rule of law should be understood against the background that human rights are inseparable from the rule of law and that the African Commission is responsible for monitoring the promotion and protection of human rights and therefore reports before it are expected to emphasise human rights issues.

It is one thing for a country to amend legislation, ensure the independence of the judiciary, organise elections, ratify international instruments, establish human rights institutions and fight corruption, and quite another to have the impact of such initiatives realised in practice. It is critical that such reports go beyond outlining the measures being taken to promote the rule of law and actually inform the African Commission on how such measures have been implemented in practice and how they have impacted on the lives of ordinary people. Many countries ratify international instruments, but those instruments remain of no use at the local level unless they have been domesticated for courts to rely on them in interpreting the relevant human rights provisions. Legislation could be enacted and no measures taken to implement it in practice. Measures could be taken to fight corruption, but that does not mean that such measures have been or are likely to be effective. Elections could be held but in an environment in which they cannot be free and fair. The law could provide for an independent judiciary, but resources may not be made available to such a judiciary to carry out its mandate. The point being made here is that it is not

99 The Republic of Zimbabwe 7th, 8th, 9th and 10th Combined Report under the African Charter on Human and Peoples’ Rights (October 2006) 46.

100 Zimbabwe 7th, 8th, 9th and 10th Combined Report (n 99 above) 11.

enough for countries to report in abstract terms on the measures being taken to promote the rule of law. They should report on how those measures have been implemented in practice.

A worrying trend emerging from the reports studied for this article is that there appears to be an understanding that the rule of law goes hand in hand with the promotion and protection of civil and political rights. This is why issues such as the right to a fair trial, the holding of elections, freedom of expression and the establishment of the institutions to support democracy feature prominently in these reports. However, in these reports many countries also report on the measures taken to protect socio-economic and cultural rights, but not in the context of the rule of law. It is therefore critical that African states are reminded that the promotion and protection of socio-economic and cultural rights are as important to the rule of law as are the promotion and protection of civil and political rights.

The question whether the ratification of international human rights instruments is an example of whether a given state respects the rule of law is an important one. Some of the reports discussed above show that states have cited the fact that they ratified or acceded to international treaties as an example that they are either on their way to having the rule of law entrenched in their jurisdictions or that in fact there is a rule of law in those countries. However, it is one thing for a state to ratify an international human rights treaty and quite another for the obligations imposed by such a treaty to be implemented. There are two issues that need to be examined closely in cases where a state cites its ratification of an international treaty to demonstrate its adherence to the rule of law: whether such a treaty is part and parcel of the law of the state in question, that is, whether litigants can rely on such treaties in courts of law and that judges or magistrates are in fact allowed to apply such treaties, and whether states take the obligations imposed by such treaties seriously, for example by submitting their periodic reports on time and implementing the recommendations made by treaty enforcement bodies on those reports or in communications brought against such states. The Cameroonian experience above is an example of the tension that might exist between a state's international obligations and its domestic law. Therefore, before states are commended for ratifying international treaties, the question should be asked how the obligations imposed by those treaties are being or have been implemented.

6 Promotional mission reports

The African Commission, in order to fulfil its promotional role, has conducted several missions to different African countries. The reports written on those missions highlight the achievements that have been registered by the relevant country and the challenges faced in the protection and promotion of human rights. In those reports, the African

Commission makes recommendations on what it thinks the measures are that should be taken to promote and protect human rights. Our attention now shifts to an examination of the mission reports to distil the African Commission's observations or recommendations with regard to the rule of law. There are two broad ways through which the African Commission has dealt with the question of the rule of law in its mission reports. One, it has criticised some governments for failing to uphold the rule of law. This has been the case with regard to the government of Zimbabwe which the African Commission criticised for its failure to 'uphold the rule of law' and its failure 'to chart a path that signalled a commitment to the rule of law' when it encouraged war veterans to intimidate and assault opposition politicians.¹⁰¹ The second way has been for the African Commission to applaud certain countries for putting in place mechanisms to promote the rule of law.

In its report on its promotion mission to Ghana, the African Commission¹⁰²

observed with appreciation [that] the establishment of the *Commission on Human Rights and Administrative Justice*, together with the independence of the judiciary and other institutions supporting democracy, the rule of law and human rights, have created a conducive atmosphere of trust in which a culture of human rights can flourish.

The Ghanaian government informed the African Commission that '[t]he police are established to, among other things, provide protection for persons and property, prevent the commission of crime, and uphold the rule of law'.¹⁰³

In its report on the promotion mission to Botswana, the African Commission delegation noted that¹⁰⁴

[s]ince independence, Botswana has exhibited strong elements of democracy – accountability of government to the electorate through regular free elections held every five years, relatively uncorrupt government bureaucracy, government and judicial respect for human rights and the rule of law ...

The African Commission delegation noted that one of the government officials 'indicated that corruption by its nature undermines democracy, the rule of law, diverts resources from their legitimate goals, undermines the economy and inevitably undermines the enjoyment of human rights'.¹⁰⁵

The Guinea Bissau Minister of Justice informed the African Commission that prisons are important in combating 'impunity and

101 Executive Summary of the Report of the Fact-finding Mission to Zimbabwe 24-28 June 2002, para 5.

102 Report of the Promotion Mission to the Republic of Ghana 1-5 September 2008, para 169 (emphasis in original).

103 Report of the Promotion Mission to the Republic of Ghana (n 102 above) para 182.

104 Mission Report to the Republic of Botswana 14-18 February 2005 8.

105 Mission Report to the Republic of Botswana (n 104 above) 34.

further respect for the rule of law and human rights', but noted that many offenders were being released early to decongest prisons.¹⁰⁶ The Minister also informed the delegation that 'the international community has commended his government's seriousness in respect of the rule of law'.¹⁰⁷

Some governments, such as that of Zimbabwe, have questioned the African Commission's conclusions as to the question of the status of the rule of law in those countries. The Zimbabwean government, for example, responded to the African Commission's findings that there was a breakdown of the rule of law in the country by saying that it 'denies that there was ever a breakdown of the rule of law. There never was a time that the system failed to address the situation in the country'.¹⁰⁸ Such disagreements highlight the difficulties inherent in drawing the conclusion that there is or there is not a breakdown of the rule of law in the country. Countries expect the African Commission to give compelling evidence before it draws the conclusion that there is a breakdown of the rule of law in the country. It also means that the African Commission will have to do more research and establish what constitutes the breakdown of the rule of law in a country which is, for example, not experiencing a civil war. Otherwise, its reliance on a few examples of some people, even with government approval, engaging in criminal activities will easily be rejected by governments.

7 Conclusion

The above paragraphs have examined the way in which the African Commission has used its mandate to promote the rule of law. The author has looked at the resolutions passed by the African Commission, the communications decided by the Commission, and promotional mission reports to demonstrate the Commission's different understandings of the concept of the rule of law. All three mechanisms show that the African Commission has had a different understanding of the meaning of the rule of law at different times. This is a clear example of how difficult it is to come up with a single universal meaning of what the rule of law is. However, what is clear is that human rights protection is an integral part of the rule of law. The author has also looked at state parties' periodic reports to show how states have reported to the African Commission on the measures they have taken to promote and respect the rule of law in

106 Report of the Promotional Mission to the Republic of Guinea Bissau 16-22 March 2005 15.

107 Report of the Promotional Mission to the Republic of Guinea Bissau (n 106 above) 19.

108 Executive Summary of the Report of the Fact-finding Mission to Zimbabwe 24-28 June 2002 30.

their jurisdictions. What emerges is that, although different states have different understandings of what the rule of law is, every state is making an effort to ensure that it puts measures in place to promote what it considers to be the rule of law.